

UTILITIES DIVISION[199]

Adopted and Filed

Rule making related to electric power generating facilities

The Utilities Board hereby amends Chapter 24, “Location and Construction of Electric Power Generating Facilities,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 474.5, 476.2 and 476A.12.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 476A.

Purpose and Summary

The Board is conducting a comprehensive review of its administrative rules in accordance with Iowa Code section 17A.7(2). The purpose of this review is to identify and update or eliminate rules within Chapter 24 that are outdated or inconsistent with statutes and other administrative rules.

These specific amendments update and streamline the filing rules related to generating certificate dockets by updating statutory references, accommodating electronic filing, and removing outdated language. The amendments also add notice requirements relating to any potential request for the power of eminent domain. The amendments also clarify existing language and make other editorial changes.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 25, 2017, as **ARC 3416C**. The Board received comments from the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, and jointly from Interstate Power and Light Company and MidAmerican Energy Company (Joint Utilities). OCA stated it had no objections to the proposed amendments. The Joint Utilities stated they had no objection to the proposed amendments and proposed one additional amendment. Specifically, the Joint Utilities proposed amending the definition of “facility” to specifically exclude certain projects where each collector or gathering line would be connected to less than 25 megawatts of nameplate generating capacity. OCA filed reply comments opposing the proposed additional amendment. OCA stated the proposed amendment is too broad and would change the statutory definition promulgated by the legislature.

After consideration of the stakeholder comments, the Board did not adopt the additional amendment proposed by the Joint Utilities as the Board does not believe the current process regarding collector and gathering lines needs to be formalized in the rules, especially in light of OCA’s objections to the proposed amendment. No changes from the Notice have been made.

The Board issued an order adopting amendments on March 19, 2018. The order is available on the Board’s electronic filing system under Docket No. RMU-2016-0026.

Adoption of Rule Making

This rule making was adopted by the Board on March 19, 2018.

Fiscal Impact

After analysis and review, the Board concludes that the amendments will have no effect on the expenditure of public moneys within the State of Iowa.

Jobs Impact

After analysis and review, the Board concludes that the amendments will not have a detrimental effect on employment in Iowa.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to rules 199—1.3(17A,474,476) and 199—24.15(476A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on May 16, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend rule **199—24.2(476A)**, definitions of “Intervenor” and “Significant alteration,” as follows:

“*Intervenor*” means a person who received notice under 24.6(2) “b,” “c,” “d,” “e,” or “f” and has filed with the board a written notice of intervention, ~~or, in all other cases, who, upon written petition of intervention is permitted in the proceeding pursuant to 199—subrule 7.2(8) or a person granted permission to intervene by the board after filing a petition pursuant to rule 199—7.13(17A,476).~~

“*Significant alteration*” means:

- a. A change in the generic type of fuel used by the major electric generating facility; or
- b. Any change in the location, construction, maintenance, or operation of equipment at an existing facility that ~~results in a 10 percent increase or more in the maximum generator nameplate capacity of an existing facility if the increase is more than or equal to~~ increases the maximum generator nameplate capacity of the facility by at least 10 percent and at least 25 megawatts.

ITEM 2. Amend paragraph **24.3(1)“a”** as follows:

- a. The application, associated documents, or other papers filed with the board in a certification proceeding shall be capable of being printed or typewritten and reproduced on sheets of 8½ inches by 11 inches (except for foldouts and special exhibits) in loose leaf or equivalent replaceable sheet form with hard cover.

ITEM 3. Amend subrule 24.3(2) as follows:

24.3(2) Manner and place of filing.

- a. An applicant shall file the ~~original and 20 copies of its application with the board by presentation or mailing to the Executive Secretary, Iowa Utilities Board, 1375 E. Court Avenue, Room 69, Des Moines, Iowa 50319-0069~~ application electronically unless otherwise permitted by the board.

- b. ~~Within ten days of receipt of the application the Executive Secretary shall acknowledge in writing receipt of the application, but said acknowledgment shall not constitute acceptance of the application.~~

~~c. b.~~ Within ten days of the receipt of application, the board shall forward copies thereof to each regulatory agency listed in the application. In addition, that part of the application responding to 24.4(1) “a” through “c” will be forwarded to such The board, through the use of its electronic filing system, shall include on the service list for the application each regulatory agency listed on the application in addition to other agencies as the board deems appropriate, including the office of state archaeologist, the division of community action agencies of the department of human rights, and the office of historical preservation of the state historical society of Iowa as interested agencies, and also to the Iowa department of transportation, and the Iowa department of natural resources, if such have not been designated as regulatory agencies.

~~d. c.~~ Any amendments to the application shall be filed in a manner similar to that required of the application.

ITEM 4. Amend rule 199—24.4(476A), introductory paragraph, as follows:

199—24.4(476A) Application for a certificate—contents. Each person or group of persons proposing to construct a facility after January 1, 1977, or a significant alteration to a facility shall file an application for certificate with the board, unless otherwise provided by these rules. The applicant may file a portion of an application and, in conjunction therewith, a request that the board accept such portion of the application pursuant to subrule 24.5(3) and conduct a separate phase of the proceeding with respect to issues presented by such portion of the application to the extent permitted pursuant to 24.5(3) and rule 199—24.9(476A). An application shall substantially comply with the following informational requirements:

ITEM 5. Amend paragraph **24.4(1)“j”** as follows:

j. The names and addresses of those owners and lessees of record ~~or of~~ of real property identified in 24.6(2) “d” and “e.”

ITEM 6. Adopt the following new paragraph **24.4(1)“k”**:

k. The names and addresses of those owners and lessees of record of real property for whom the applicant seeks the use of eminent domain.

ITEM 7. Amend paragraph **24.4(3)“b”** as follows:

b. A forecast of any temporary ~~stress~~ impact placed upon housing, schools or other community facilities as a result of a temporary influx of workers during the construction of the proposed facility.

ITEM 8. Amend subrule 24.5(2) as follows:

24.5(2) Applicant The applicant shall have 30 days from notification of deficiencies to amend or request, for good cause, a reasonable extension of time to amend. In the event the applicant fails to amend within the time allowed or, after amendment, the application or portion thereof filed is not in substantial compliance with the requirements of rule 199—24.4(476A) which pertain thereto, the board may reject the application or such portion thereof. Such rejection shall constitute final agency action, but shall not preclude reapplication.

ITEM 9. Amend paragraph **24.6(2)“f”** as follows:

f. ~~Other interested persons as determined by the board.~~ Owners and lessees of real property for which the applicant seeks the power of eminent domain.

ITEM 10. Adopt the following new paragraph **24.6(2)“g”**:

g. Other interested persons as determined by the board.

ITEM 11. Amend subrule 24.8(1) as follows:

24.8(1) General. The proceedings conducted by the board pursuant to this chapter shall be treated in the same manner as a contested case pursuant to the provisions of Iowa Code chapter 17A. Except where contrary to express provisions below, the hearing procedure shall conform to the board’s rules of practice and procedure, 199—Chapter 7, ~~IAC~~. The proceeding for the issuance of certificate may be consolidated with the contested case proceeding for determination of applicable ratemaking principles

under Iowa Code section 476.53. All filings shall be made electronically unless otherwise permitted by the board.

ITEM 12. Amend paragraph **24.8(2)“a”** as follows:

a. Notice of intervention. An agency not receiving notice pursuant to 24.6(2) “b” may become a party to the contested case proceeding by filing ~~with the board an original and ten copies of~~ a notice of intervention. Such notice shall contain a statement of the jurisdiction or interest of the particular agency with respect to the proposed facility.

ITEM 13. Amend paragraph **24.8(2)“b”** as follows:

b. Petition to intervene. Any other person wishing to become a party to the contested case proceeding may request to intervene in the proceeding by petition to intervene filed at least 30 days prior to the date of the scheduled hearing, but not afterward except for good cause shown. Such application shall specify the issues in which petitioner may contest before a regulatory agency or otherwise. A petition to intervene shall substantially comply with the form prescribed in 199—subrule 2.2(10). ~~The original and ten copies of the petition shall be filed with the board.~~ All other parties to the proceeding shall have the right to resist or respond to the petition to intervene within seven days subsequent to the petitioner’s service thereof.

ITEM 14. Amend subrule 24.8(5) as follows:

24.8(5) Application for rehearing. All applications for rehearing will be made and processed in accordance with Iowa Code ~~section~~ sections 17A.16(2) and 476.12. Applications for rehearing after ~~decision~~ decisions made by the board must state the specific grounds upon which the application is based and must specify such findings of fact and conclusions of law and such terms or conditions of any certificate or amendment to certificate as are claimed to be erroneous, with a brief statement of the grounds of error. An application for rehearing shall substantially comply with the form prescribed in 199—subrule 2.2(13). ~~The original and ten copies of the application shall be filed with the board.~~

ITEM 15. Amend subrule 24.10(4) as follows:

24.10(4) Denial. In the event the applicant fails to amend in a timely fashion, or after amendment or reopening the record, or both, the board is still unable to make an affirmative finding, the board will deny the application. ~~Applicant~~ The applicant may request rehearing on such denial in accordance with Iowa Code ~~section~~ sections 17A.16(2) and 476.12.

ITEM 16. Amend subrule 24.11(1) as follows:

24.11(1) In the event no certificate has been issued after 90 days from the commencement of the hearing, the board may permit ~~the~~ applicant to begin work to prepare the site for construction of the facility. Any activities conducted pursuant to this ~~section~~ rule shall have no probative value to the board’s decision concerning the actual issuance of a certificate.

ITEM 17. Amend subrule 24.12(2) as follows:

24.12(2) Eminent domain. The certificate shall give the applicant the power of eminent domain to the extent and under such conditions as the board approves, prescribes, and finds necessary for the public convenience, use, and necessity, proceeding in the manner of works of internal improvement under Iowa Code chapter 472 6B.

ITEM 18. Amend rule 199—24.15(476A) as follows:

199—24.15(476A) Waiver. The board, if it determines that the public interest would not be adversely affected, may waive any of the requirements of this chapter. In determining whether the public interest would not be adversely affected, the board will consider the following factors:

1. The purpose of the facility.
2. The type of facility.
3. If the facility is for the applicant’s own needs.
4. The effect of the facility on existing transmission systems.
5. Any other relevant factors.

In addition to other service requirements, the applicant must serve a copy of the waiver request on all owners of record of real property that adjoins the proposed facility site. A request for a waiver shall also comply with rule 199—1.3(17A,474,476).

This rule is intended to implement Iowa Code sections 476A.1, 476A.2, 476A.4, 476A.6, 476A.7 and 476A.15.

[Filed 3/19/18, effective 5/16/18]

[Published 4/11/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/11/18.